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Attorneys for SunGard Creditors

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

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In re	)	Chapter 11
	)	
LEHMAN BROTHERS HOLDINGS INC.,	)	Case No. 08-13555 (JMP)
<i>et al.</i> ,	)	
	)	(Jointly Administered)
Debtors.	)	
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**LIMITED OBJECTION AND RESERVATION OF RIGHTS TO DEBTORS' MOTION TO  
APPROVE THE SALE OF CERTAIN EQUITY INTERESTS AND ASSETS RELATED  
TO LEHMAN BROTHERS' INVESTMENT MANAGEMENT DIVISION**

Creditors Advanced Portfolio Technologies, Inc.; Assent LLC; Automated Securities  
Clearance LLC; Automated Securities Clearance, Ltd.; Microhedge LLC; Monis Software  
Limited; SunGard Asset Management Systems, a division of SunGard Business Systems Inc.;  
SunGard Expert Solutions LLC; SunGard Asset Management Systems LLC; SunGard Availability  
Services LP; SunGard Business Integration (UK) Ltd.; SunGard Institutional Brokerage Inc.;  
SunGard Investment Products; SunGard Investment Systems LLC f/k/a SunGard Investment  
Systems Inc.; SunGard Reference Data Solutions Inc. f/k/a Fame Information Services Inc.;

SunGard Securities Finance International Inc.; SunGard Securities Finance LLC; SunGard Systems International, Inc. d/b/a SunGard Trading and Risk Systems; Wall Street Concepts LLC and any and all affiliates of the above listed entities (hereinafter collectively referred to as "SunGard") hereby file their Limited Objection and Reservation of Rights to the Motion of Lehman Brothers Holdings Inc. (the "Debtor") to Approve the Sale of Certain Equity Interests and Assets Related to Lehman Brothers Investment Management Division (the "Sale Motion"), as follows:

**I. PRELIMINARY STATEMENT**

The assumption and assignment of any contract to which SunGard is a party cannot be approved in connection with the Sale Motion. While the Court's bid procedures order contemplates a December 17, 2008 date to object to the sale and the assumption and assignment of contracts, it also contemplates notice being provided to non-Debtor contracting parties prior to the objection deadline. At this time, no assumption and assignment notices have been provided to non-Debtor contracting parties and no proposed sale order has been made available for review. The Debtor's failure to provide any notice as to which contracts it will seek to assume and assign and the terms of the sale order that may govern such assumption and assignment places SunGard and any other party to a contract that may be assumed and assigned in the untenable position of potentially being subject to a sale order that negatively affects their rights in this bankruptcy case without the ability to properly assert and defend their rights in these proceedings.

Accordingly, SunGard asserts that to the extent that the Debtor intends to assume and assign any contract of SunGard, the assumption and assignment should be conducted by a separate motion that provides upon notice and any order approving the Debtor's proposed sale should not apply to SunGard's contract rights. Finally, SunGard reserves all of its rights in connection with its objection, including its right to conduct discovery regarding the factual basis for the objection and any issues related thereto and to file additional pleadings, declarations, and/or assert additional factual and legal arguments in connection with the assumption and assignment of its contracts with the Debtor.

## **II. BACKGROUND**

On October 22, 2008, this Court entered its Order (I) Approving the Bidding Procedures, (II) Approving the Seller Termination Fee and the Reimbursement Amount, (III) Approving the Manner of Sale Notices, and (IV) Setting the Auction and Sale Hearing Date in connection with the Sale of Certain Debtors Assets (the "Bid Procedures Order"), in connection with the Debtor's proposed sale of its investment management division ("IMD"). Among other things, the Bid Procedures Order required that notice of the sale be provided to non-debtor contracting parties that the Debtor seeks to assume and assign to the successful bidder. Further, the Bid Procedures Order set the objection deadline to any proposed cure amount and the sale for December 17, 2008. The Bid Procedures Order further stated that if the successful bidder at the auction was a party other than the original stalking horse - IMD Parent LLC - then the assumption, assignment and cure notice (the "Assumption Notice") would be delivered to non-Debtor contracting parties "as soon as practicable" after the December 3, 2008 auction and non-Debtor contracting parties would be given ten (10) days to object to the Assumption Notice. Further, the Assumption Notice was required to be published on the Debtor's claims administrator's website (the "Website").

According to the Website, the auction was completed and NBSH Acquisition, LLC was the successful bidder for the IMD assets. A copy of the purchase agreement is available online, but as of this time, a copy of the proposed sale order has not been uploaded.<sup>1</sup> Further, as of the date of this Limited Objection, no notices appear on the Website specifying which contracts may be assumed and assigned.

## **III. SUNGARD HAS NOT RECEIVED SUFFICIENT DUE PROCESS TO ALLOW FOR THE ASSUMPTION AND ASSIGNMENT OF ITS CONTRACTS**

The Debtor has failed to provide SunGard with any notice as to how the sale of the IMD assets will affect SunGard's contract rights. While it is true that limited notice was provided to non-Debtor contract parties in connection with the Debtor's sale of its assets to Barclays Capital, Inc., the circumstances surrounding that sale involved exigent circumstances and issues of national

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<sup>1</sup> The Website states a form of the proposed order will be made available before the December 22, 2008 sale hearing.

importance. No such circumstances exist in connection with the sale of the IMD assets as these sale proceedings have been pending for nearly two months and the Debtors and purchaser have had ample time to make any determinations regarding executory contracts.

Moreover, the Debtor has yet to fulfill even the most basic requirements under section 365 of the Bankruptcy Code. For example, section 365 requires that the Debtor provide adequate assurance that the assignee will be able to perform under the contract. No such evidence has been provided.

Given these circumstances, if the Debtor wishes to assume and assign any of SunGard's contracts, the Debtor should be required to do so upon a properly noticed motion with as required by the Federal Rules of Bankruptcy Procedure and any applicable local rules. Further, nothing in any order approving the sale should negatively affect, in any way any of SunGard's contract rights and SunGard's rights in this bankruptcy case and SunGard reserves any and all rights to contest the assumption and assignment of any of its contracts.

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**IV. CONCLUSION**

For all of the above reasons, the assumption and assignment of any of SunGard's executory contracts and/or licensing agreements should be denied until the Debtor complies with its notice and due process obligations and its obligations under section 365 of the Bankruptcy Code.

Dated: Garden City, New York  
December 16, 2008

MEYER, SUOZZI, ENGLISH & KLEIN, P.C.

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